

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA, et al.,	:	CASE NO.: 1:02-cv-00107
	:	
	:	
Plaintiffs,	:	JUDGE S. ARTHUR SPIEGEL
	:	MAGISTRATE HOGAN
v.	:	
	:	RESPONSE TO GAMMARINO
	:	MOTION FOR REVIEW
BOARD OF HAMILTON COUNTY COMMISSIONERS, et al.	:	
	:	
	:	
Defendants.	:	

The City and County Defendants (“the MSD”) respond to Al Gammarino’s Motion for a Review (Doc #165) as follows:

1. The MSD investigated Mr. Gammarino’s claim through the City of Cincinnati’s claims office. At the time the Claims Administrator was Anita Boulmetis.
2. Mr. Gammarino had a sewer backup on or around January 3, 2004 at an unoccupied industrial property located at 3291 Beekman Street.
3. The MSD could not determine the cause of the backup so the MSD contractor cleaned the property. (Original MSD Complaint form attached as Exhibit A). The Complaint form notes “no main sewer trouble” and that the responsibility was “private.” According to the MSD investigation, the problem on the property was on private property and not the result of the inadequate capacity of the sewer system.

4. The MSD customarily cleans property as a courtesy to customers who report a backup when the cause of the backup cannot be determined within 48 hours.
5. After Mr. Gammarino's claim for damages was received, the Solicitor's office attempted to determine if the items claimed (a furnace made between 1954 and 1968, and a refrigeration unit that did not have a floor) were replaced by Mr. Gammarino.
6. The Solicitor's Office contacted both Thompson Heating and Cooling and Hamilton County Refrigeration Company (the estimates provided by Mr. Gammarino) to determine if the furnace and refrigeration unit were replaced. While both companies could locate the estimates from 2004, neither company could confirm that the items claimed were purchased by Mr. Gammarino for the Beekman Street property. According to the vendor's records, the items were never purchased.
7. The Beekman street property was sold on October 7, 2004. The Solicitor's Office contacted the buyer, Casey D. Laster regarding the property. Mr. Laster confirmed that he bought the property "as is" from Mr. Gammarino, with no knowledge of any disclosure or history of any sewer backup on the property.
8. Mr. Gammarino confirmed that he made a claim to his insurance company for the same damages claimed in his Motion for Review. Mr. Gammarino received \$5000.00 from his insurance company for his claimed damages.

9. The information supplied by the MSD cleaning company, ETC, was that the Williamson Furnace was over 40 years old and that the refrigeration unit was missing its floor.
10. However, because the cause of the backup could not be determined, the MSD agreed to compensate Mr. Gammarino for the claimed damages for the painting of the basement walls, and for the purchase of a hot water heater. The response from the Solicitor Office is attached as Exhibit B.
11. Because Mr. Gammarino received payment for damages from his insurance company in the amount of \$5000.00, and his deductible was \$500.00, the MSD defendants respectfully submit that the only amount due and owing is the deductible amount.

Accordingly, the MSD defendants request that Mr. Gammarino's Request for a Review be denied and that the Court determine that the only amount due and owing to Mr. Gammarino is his \$500 deductible.

Respectfully submitted,

**JULIA L. MCNEIL (0043535)
City Solicitor**

/s/ Terrance A. Nestor

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Trial Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify on March 12, 2007, a true and accurate copy of the foregoing Response was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ **Terrance A. Nestor**
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Sr. Assistant City Solicitor